
B. INCLUSION OF PAYROLL AND LOSSES

1. Revision of Payroll

An insurance provider may discover within the audit period (within three years of policy expiration) that previously reported payroll must be revised. When the Rating Board receives these corrections, it will revise the current and up to two preceding modifications. Refer to Part VI of the Statistical Plan for circumstances under which revised payroll values are required.

2. Revision of Losses

Revised unit reports (correction reports) to 1st, 2nd, and 3rd reports may be submitted in accordance with the Statistical Plan. With limited exception as indicated below, the Rating Board will use all payroll and loss correction reports in the production of the appropriate modifications. Refer to Part V of the Statistical Plan for circumstances under which revised loss values are required.

- a. Submission of revised loss values on unit reports will result in the automatic recalculation of the current and, if applicable, up to **two** preceding modifications when:
 - i. Originally reported loss values were incorrect due to clerical or processing error
 - ii. An originally reported claim is non-compensable in its entirety as defined in Part IV(17)(e) of the Statistical Plan.
 - iii. An originally reported claim is partially non-compensable and corrections are reported in accordance with Part IV, Item (9)(B) of the Statistical Plan.
 - iv. Data obtained from carriers, including insolvent carriers and insolvent carrier data obtained from third party sources, has been submitted later than the customary due date schedule for unit statistical reports.
- b. Submission of revised loss values when a subrogation recovery is applicable to a claim will result in the automatic recalculation of the current and up to six preceding modifications. If a subrogation recovery is obtained in an action against a third-party, the current modification is that which is in effect when the insurance provider determines the revised loss value.
- c. In cases where a claim has been officially determined by the courts or ruling by the Workers' Compensation Board to be fully or partially fraudulent, the submission of revised loss values

will result in the automatic recalculation of the current and up to six preceding modifications. If a claim is officially declared fraudulent, the current modification is that which is in effect when the official declaration of fraud is made.

Note:

In cases where a claim involves a subrogation recovery, or is declared fully or partially fraudulent, the respective identifiers must be included on the revised unit statistical reports. Failure to properly identify these cases will result in no change in the modification. Refer to Part IV of the Statistical Plan for appropriate coding information.

3. Corrections in Classifications

- a.** A risk's classification(s) may be corrected in accordance with the New York Workers' Compensation and Employers' Liability Manual. When a classification assigned to a risk is revised other than as a result of a change in risk operations, the modification may be recalculated by the Rating Board. The purpose of such recalculation is to produce a modification using rating values that correspond to the class rates charged on a policy.
- b.** In such circumstances, the Rating Board will act to ensure the proper calculation and application of modifications. This includes, but is not limited to:
 - Reassigning past payroll to the appropriate classification code(s) and rating values
 - Using correction reports submitted in accordance with the Statistical Plan
 - Reviewing the information submitted regarding each change and determining the impact, if any, on the modification(s) of the entities involved
 - Requesting additional information, if necessary, due to the complexity of certain corrections
- c.** The Rating Board will not revise an existing modification if the change in classification is a result of:
 - A change in risk operations
 - A filed and approved change to the classification system

4. Third-Party Cases

Losses for which a third-party claim has been made are included in the calculation of a modification under the following conditions:

- a.** Unsettled Claims
Use the loss as reported at full value.
- b.** Settled claims
Use the following procedure to adjust the loss amount:
 - i.** Determine the loss amount prior to settlement
 - ii.** Subtract the amount recovered
 - iii.** Add the expenses incurred in obtaining the recovery
 - iv.** If the amount in (iii) exceeds the recovery amount in (ii), use the loss amount in (i) prior to settlement

a.

5. Liability-Over Cases

Liability-Over refers to suits or claims brought against an insured by third parties to recover all or a portion of damages obtained from such third parties by the insured's employees because of a bodily injury sustained by these employees arising out of and in the course of employment. When a risk's incurred losses include liability-over claims, the inclusion of such losses in the experience rating calculation is as follows. When settled liability-over claims result in:

- a. No payment to a third-party – The experience rating calculation will include any allocated claim adjustment expense incurred in defending such claims. This expense is limited to the Primary/Excess Split Point applicable to the risk.
- b. Payment to a third-party – No change is made in the loss valuation used in the calculation of the current modification. At the next valuation date, the calculation will include the settlement amount plus any allocated claim adjustment expense incurred in defending such claims. This expense and settlement amount is limited to the Primary/Excess Split Point applicable to the risk.
- c. For unsettled claims, incurred loss values are included in the experience rating calculation.